

# **S. 1871 – STOCK Act: Stop Trading on Congressional Knowledge Act of 2011**



## **Sen. Scott Brown**

“I was shocked when *60 Minutes* exposed Congress’ unfair trading advantage. At a time when the American people’s trust in Congress is close to an all-time low, it is more important than ever that members of Congress affirm that we live by the same rules as everyone else.”  
Sen. Scott Brown

## **A Longstanding Problem**

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### **Allegations of an unfair trading advantage for members of Congress are not new:**

In 1966 Law Professor Henry G. Manne, wrote a book about insider trading by government officials. The Wall Street Journal has also repeatedly covered the issue. Notably, according to a study by economist Alan J. Ziobrowski, between 1993 and 1998, the common stock investment portfolios of U.S. Senators beat the market by 12% a year, on average. In contrast, the common stock investment portfolios of U.S. households as a whole underperformed the market on average by 1.4% a year during the same period. Corporate insiders investing in their own company’s stock only beat the market by about 6% a year on average during that period. Most recently, Peter Schweizer’s book documented various members of Congress’ trading decisions in relation to the decisions that were being made in Congress in November 2011.

## **An Indefensible Privilege**

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### **Scholars disagree on whether members of Congress owe a clear fiduciary duty to Congress:**

Some scholars argue that current laws already apply to members of Congress and see no need for the STOCK Act. Most scholars argue that members of Congress are not covered by insider trading law because members of Congress have no duty that prevents members from trading on material nonpublic information. The mere existence of this debate is enough to show that we need the STOCK Act to clearly define an affirmative duty on members of Congress to the American public pertaining to confidential nonpublic information. Not defining this duty will leave a “gap” of uncertainty that invites abuse and contributes to breakdown of trust among the American people.

## **S. 1871: Restoring Trust in Congress**

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### **The STOCK Act prevents Members of Congress from profiting off nonpublic information:**

- The Act would prohibit Members and employees of Congress and Executive Branch employees from buying or selling stocks, bonds, or commodities futures based on nonpublic information they obtain because of their privileged status.
- The Act would prohibit Congressional Members and employees from disclosing any non-public information about any pending or prospective legislative action obtained from a member or employee of Congress for investment purposes.
- Congressional Members and employees would be required to report the purchase, sale or exchange of any stock, bond, or commodities future transaction in excess of \$1,000 within 90 days.
- Political intelligence firms would be required to register with the House and Senate, much like lobbyists currently do.

## **S. 1871 Passes the Watchdog Test**

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**The STOCK Act has been endorsed by a broad spectrum of good government organizations:**

- Center for Responsibility and Ethics in Washington
- Common Cause
- Consumer Watchdog
- Democracy 21
- Public Citizen
- Sunlight Foundation
- U.S. PIRG

“Though a few academics argue that existing laws and ethics codes could be interpreted to prohibit congressional insider trading, the fact of the matter is that neither congressional ethics officers, the SEC nor the Department of Justice have applied and enforced the laws against insider trading to Congress. It is widely assumed that members and staff are exempt, and that is why legislation making it clear that insider trading is illegal for all is absolutely necessary.” – **Public Citizen**

## **Senate Resolution Needed**

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**To clear up any legal ambiguity, a Senate Resolution is needed to clearly define that members of the Senate may not use their position for personal gain:**

- However, the Senate Resolution was not included in the STOCK Act because a Senate Resolution requires 67 votes to be enacted, whereas a Senate bill requires a simple majority. Because Senator Brown feels strongly about the need for the STOCK Act, he did not want the Senate Resolution to make passing the STOCK Act more difficult.
- This Senate resolution will clearly state that members of the Senate may not disclose or use any material nonpublic information learned during the course of his or her service for personal gain.
- Although some scholars have argued that the Senate Ethics Rules already address personal gain received through improper use of office or position, this resolution will dispel any ambiguity.

## **Differences between Brown bill (S. 1871) and Gillibrand bill (S. 1903)**

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- Senator Brown’s STOCK Act does not amend a Senate Ethics rule because amending a Senate Rule requires 67 votes to pass, not a simple majority. Therefore, Senator Brown would need 51 votes to pass his STOCK Act whereas Senator Gillibrand would need 67 votes to pass her STOCK Act.
- Senator Gillibrand’s STOCK Act prohibits insider trading by Members of Congress only if the member personally trades on material nonpublic information AND tips the information to another person with the intent to aid that person in using the material nonpublic information to trade for personal profit.
- Senator Gillibrand’s STOCK Act does not apply when someone gives Member of Congress material nonpublic information with the intent to assist the Member in trading on that information.